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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

MALTA*

[29 September 1998]

* The initial report submitted by the Government of Malta is contained in document CAT/C/12/Add.7; for its consideration by the Committee, see documents CAT/C/SR.255, 256 (closed) and 256/Add.1 and Official Records of the General Assembly, Fifty-first session, Supplement No. 44 (A/51/44), paras. 163-173.

GE.98-05023 (E)

I. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

A. Self-incrimination

1. There does in fact exist a rule against self-incrimination in Maltese criminal law. Section 39 (10) of the Constitution, which can only be amended through a two-thirds majority, stipulates that: "No person who is tried for a criminal offence shall be compelled to give evidence at his trial."

2. In addition, the Criminal Code contains a provision which protects witnesses from incriminating questions. Section 643 declares:

> "No witness may be compelled to answer any question which tends to expose him to any criminal prosecution:
>
> Provided that, in the case of a prosecution under paragraph (h) of section 338, on a charge of providing the place for the playing of games of chance for money or money's worth, or of abetting such games, any person who had taken part in or had been a partner of any player at any such game, whose evidence is required in support of such charge as aforesaid, shall be compellable to answer any question respecting that charge, notwithstanding that the answer thereto will expose him to criminal prosecution; but in any such event, any person who shall have given evidence in respect of such charge, and who shall have made a true and faithful statement touching such charge, to the best of his knowledge, shall thereupon obtain from the court a certificate to that effect, and he shall, in consequence, be exempted from all punishments in respect of his participation in the games forming the subject-matter of the charge upon which he gave evidence as a witness."

B. Refugee status

3. Malta is party to and implements the 1951 Convention relating to the Status of Refugees, agreeing to accept, recognize and protect refugees. Due to Malta's limited size, very high population density and financial constraints, these obligations were limited in scope to cover only refugees coming from the European continent. In spite of this, in January 1997 more than 84 per cent of the 538 refugees residing in Malta hailed from non-European countries, the largest number originating from Iraq.

4. Applications for refugee status are made to the Emigrants Commission, the contact point of the Office of the United Nations High Commissioner for Refugees in Malta. The Commission, which is independent of Government, passes requests for the granting of refugee status to the UNHCR Rome office. The Home Affairs Division of the Office of the Prime Minister, the Ministry of Foreign Affairs and the Immigration Division of the Police Department are also involved in the process of regularizing a refugee's position in Malta. Refugees enjoy free health care and education during their stay in Malta.

C. Restrictions on compensation in torture cases

5. Victims of torture can claim both legal and, in recent years, moral damages in the Maltese courts.

II. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

A. Immediate access to counsel

6. Most detainees are informed by the arresting officer of their right to counsel. Many others would already be aware of their rights. Nevertheless, no specific law obliges an arresting officer to inform the detained person of his right to counsel. It should be noted that an arrested person must be brought before a court within 48 hours of his arrest when he would certainly have the assistance of a lawyer. In criminal cases a person need not prove inability to pay for a lawyer in order for the State to provide free legal counsel; it is enough for such a request for legal aid to be made.

7. Moreover, any person who feels that he has been wrongly put under arrest can invoke section 137 of the Criminal Code which is the equivalent of the British habeas corpus or section 5 of the European Convention on Human Rights.

For ease of reference, section 137 of the Criminal Code is reproduced hereunder:

> "Any magistrate who, in a matter within his powers, fails or refuses to attend to a lawful complaint touching an unlawful detention, and any officer of the Executive Police, who, on a similar complaint made to him, fails to prove that he reported the same to his superior authorities within twenty-four hours, shall, on conviction, be liable to imprisonment for a term from one to six months."

B. Refoulement

8. The Committee would do well to fully appreciate the implications of the incorporation of the European Convention on Human Rights as part of the law of Malta and the possibility of bringing an action on the basis of the rights mentioned therein. There have in fact been several occasions where persons about to be deported have invoked article 3 of the European Convention and article 36 of the Constitution of Malta in order to prevent such a deportation.

9. Two such cases never reached judgement stage. In the first case the applicant absconded from the island. In the other case the applicant was given the right to remain in Malta once he alleged that he was likely to be stoned to death on his return to a particular country, due to the fact that he had changed his faith.

10. The Government feels that at this stage no further legislation on the matter is necessary since recourse to the First Hall of the Civil Court for alleged breaches of the human right in question is expeditious, inexpensive and effective. This is due to the fact that as soon as the Maltese court is convinced that the applicant is going to be subjected to torture or to

degrading treatment or punishment, it will issue an order to bar any such deportation. In these matters the Maltese courts are certain to follow the landmark Soering judgement of the European Court of Human Rights.

11. Malta is satisfied that the Committee recognizes the added difficulties that Malta faces in implementing article 3 of the Convention as a result of its geographical position. Recent events have only served to enhance Malta's concerns in this area.

C. United Nations Voluntary Fund for Victims of Torture

12. The Committee also suggested that Malta make a contribution, even if symbolic, to the Voluntary Fund. The Maltese Government is pleased to report that it has been donating US$ 1,500 to the Fund for the last three years with the first payment being effected in December 1995.

D. Updating of general section of initial report

13. The age structure of the population, at 31 December 1996, was as follows:

Age	Percentage of population
0-14	22
15-59	62
60+	16